

REPRESENTATIVE FOR PETITIONER: Kyle Allen, *Pro Se*

REPRESENTATIVE FOR RESPONDENT: Catherine Lane, Knox County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Kyle Allen,	)		
	)	Petition:	42-019-14-1-5-20409-15
Petitioner,	)		
	)	Parcel:	42-08-17-402-020.000-019
v.	)		
	)	County:	Knox
Knox County Assessor,	)		
	)	Assessment Year:	2014
Respondent.	)		

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Appeal from the Final Determination of the  
Knox County Property Tax Assessment Board of Appeals

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**April 25, 2018**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**INTRODUCTION**

1. Allen<sup>1</sup> claimed that his assessment should be reduced to the amount he paid for the subject property. We find his evidence was insufficient support for a reduction to the assessment.

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<sup>1</sup> Allen refers to Kyle Allen, we refer to Kyle’s father, Stacy, by his full name.

**PROCEDURAL HISTORY**

2. Allen appealed the assessment of the subject property for the 2014 assessment year. The Knox County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination valuing the property as follows:

<b>Year</b>	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
2014	\$700	\$27,800	\$28,500

3. Allen appealed this decision. On January 30, 2018, our designated Administrative Law Judge (“ALJ”), Timothy Schuster, held a hearing. Neither he nor the Board inspected the subject property.
4. Kyle Allen represented himself. Catherine Lane represented herself in her capacity as Knox County Assessor. The following people testified under oath: Kyle Allen, taxpayer; Stacy Allen, witness; Catherine Lane, Knox County Assessor.

5. The following exhibits were submitted:

- Petitioner’s Ex. A: Ronald Ackman’s broker opinion,
- Petitioner’s Ex. B: Unsigned settlement statement from the United States Department of Housing and Urban Development,
- Petitioner’s Ex. C: Allen’s unsigned offer dated January 26, 2014,
- Petitioner’s Ex. D: Form 11 Notice of Assessment,
- Petitioner’s Ex. E: Form 130.
  
- Respondent’s Ex. 1: Valuation history spreadsheet,
- Respondent’s Ex. 2: 2017 subject property record card (“PRC”).

6. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeal, (2) all orders and notices issued by the Board or our administrative law judge, and (3) the digital recording of the hearing.

## **OBJECTIONS**

7. The Assessor objected to Petitioner's Exhibit A on the grounds that it was not an appraisal. The exhibit is labeled a "comparative market analysis" created by Ron Ackman, a real estate broker. An exhibit is not inadmissible solely because it is not an appraisal. The Assessor gave no other grounds for its exclusion. Thus, we overrule the objection and admit Petitioner's Ex. A. *Pet'r. Ex. A.*
  
8. The Assessor also objected to Petitioner's Exhibit C, the offer to Old National Bank ("ONB"), for relevancy. She stated, "We're already well aware of the purchase price. There is no dispute about the purchase price." An exhibit is relevant if it has *any tendency* to make a fact more or less probable. Ind. Evidence Rule 401 (emphasis added). We find the exhibit meets this minimum standard for relevancy. Thus, we overrule the objection and admit Petitioner's Exhibit C into evidence. *Pet'r. Ex. C.*

## **FINDINGS OF FACT**

9. The subject property is located at 831 West 6<sup>th</sup> Street in Bicknell, Indiana. It was acquired by ONB on August 19, 2013. ONB listed the property on October 7, 2013. It sold the property to Kyle Allen in February 2014 for \$6,500. ONB credited Allen \$1,348.93 for the 2013 taxes and the prorated 2014 taxes. From the remainder due to ONB, \$2650 was deducted for broker's fees and \$1,146.03 was deducted for additional delinquent taxes. After all expenses were deducted, ONB ultimately received \$660.04. *Resp't Ex. 2; Pet't Ex. B.*

## **PETITIONER'S CONTENTIONS**

10. Allen argued that his purchase of the subject property for \$6,500 was the best evidence of value. He also offered a market analysis in support of this value, as well as testimony about the condition of the house. *K. Allen testimony; S. Allen testimony; Pet'r. Ex. C* at 3-4.
  
11. In his market analysis, Ackman valued the property at \$6,500 as of March 1, 2014. He did not testify. Ackman used four comparable properties to develop his value. They sold

for between \$1,000 and \$9,000 between 2010 and 2014. The analysis also contains some notes about differences between the comparables and the subject property, as well as qualitative ratings. *Pet'r. Ex. A.*

12. Allen testified that the subject property was listed for sale for “over a year”, and that multiple people looked at it, but nobody was interested in buying it. Both Allen and his father, Stacy Allen, testified to the poor condition of the home, which included mold, damaged plumbing, termites, and a roof in need of replacement. *K. Allen testimony; S. Allen testimony.*

#### **RESPONDENT’S CONTENTIONS**

13. After inspecting the property, the Assessor downgraded the condition to “poor.” She also applied additional obsolescence to the property. Because of the changes and her recommendation to the PTABOA, the Assessor felt that she did everything she could to be “fair and accurate” and that the assessment was correct. *Lane testimony.*
14. The Assessor argued that the property was “a repo.” She claimed that Allen’s Exhibit A is an analysis of other repossessed properties. *Lane testimony.*

#### **BURDEN OF PROOF**

15. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year’s assessment for the same property, or (2) the taxpayer successfully appealed the prior year’s assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. *See I.C. § 6-1.1-15-17.2(a), (b) and (d).* If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year’s level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. *See I.C. § 6-1.1-15-17.2(b).* Allen conceded that he had the burden

of proof. We agree and find that the burden of proof remains with him.

#### ANALYSIS

16. Indiana assesses real property based on its true tax value, which the Indiana Department of Local Government Finance (“DLGF”) defines as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” I.C. § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 Ind. Admin. Code 2.4-1). Parties may offer evidence that is consistent with the DLGF’s definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *See Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Parties may also offer actual construction costs, sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. *Id.*; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments in property-tax appeals).
17. It is undisputed that the subject property was in poor condition as of the assessment date. But this alone is insufficient to warrant a reduction in the assessment. Instead a party must offer reliable market-based evidence. *Id.* In this case, Allen offered a market analysis prepared by a real estate broker as well as the sale price of the subject property. We examine each of these in turn.
18. When using comparable sales to show a property’s value, a party must (1) identify the relevant characteristics of the subject property, (2) explain how those characteristics compared to any purportedly comparable properties, and (3) explain how any relevant differences affected the properties’ market value-in-use. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471. Otherwise, the evidence lacks probative value. *Id.* In his market analysis, Ackman identified some differences between the comparables and the subject property, but the analysis has no explanation as to how those differences affected his opinion of value. In addition, two of the purportedly comparable sales sold almost three

years or more prior to the March 1, 2014 assessment date. This is concerning, particularly because it does not appear that Ackman made any attempt to adjust for market conditions. Finally, we note that the evidence shows very little about Ackman's credentials or his expertise, other than that he is a "Licensed Real Estate Broker." For these reasons we find the market analysis unreliable.

19. Allen also argued that his purchase of the property was reliable evidence of value. The purchase of the subject property is an objective fact and can be a good indication of value. *See Hubler Realty, Inc. v. Hendricks County Assessor*, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010) (upholding the Board's determination that the weight of the evidence supported a property's purchase price over its appraised value). The Assessor attempted to undermine the reliability of the sale by asserting that it was a "repo."
20. Generally, a property acquired by a bank, and then sold to a new party may not reflect market value. A sale from a bank to a new party is not necessarily invalid, but we must proceed with caution. *See IAAO Standard on Ratio Studies, version 17.3* at 74 (July 2007) (incorporated by reference at 50 IAC 27-1-4.) We are cautious because banks may be atypically motivated sellers for a variety of reasons because they are not normally in the business of buying and selling property. *See 125 Monitor Street, LLC v. Jersey City*, 21 N.J. Tax 232, 240-241 (N.J. Tax Ct. 2004) (discussing why "[t]ypically in bank sales, the circumstances surrounding the sale may indicate a depressed price of a property").
21. Allen testified that the property was listed for sale for over one year. Listing a property for a reasonable period of time can be an indication that a bank sale is reliable evidence of value. But the balance of the evidence indicates Allen was incorrect. The property record card shows that ONB did not acquire the property until August of 2013, or just over six months before the sale to Allen. In addition, Allen's own exhibit shows that ONB did not list the property until October of 2013.
22. The sale also had several other irregularities including back taxes, and broker's fees of over 40%. Taken together, we find it more likely than not that this sale is not a reliable indication of the subject property's value.

23. Thus, we find that Allen failed to make a prima facie case for any reduction in value. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### CONCLUSION

24. Allen failed to make a prima facie for a reduction in his assessment, and the Assessor did not request an increase in the assessment. We find for the Assessor and order no change to the assessment.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

#### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.